

1 38. The method of Claim 36 determining a retail price of the plurality of goods by  
2 using the manufacturer cost, the distributor profit data, and the retailer profit data for the good.

1 44. The machine readable medium of Claim 42 further comprising:  
2 establishing distributor profit data as either a percentage above the manufacturer cost or a  
3 specified sum; and

4 establishing retailer profit data as either a percentage above the sum of the manufacturer  
5 cost and the distributor profit data, or a specified sum.

1 45. The machine readable medium of Claim 43 further comprising:  
2 determining a retail price of the plurality of goods by using the manufacturer cost, the  
3 distributor profit data, and the retailer profit data for the good.

#### REMARKS

In response to the above-identified Office Action, Applicant amends the application and seeks reconsideration thereof. In this response, Applicant amends claims 4-8, 20-25, 37, 38, 44 and 45. Applicant does not cancel any claims or add any new claims. Accordingly, claims 1-53 are pending.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attachment is captioned "Version With Markings To Show Changes Made."

#### **I. In the Drawings**

The Examiner required correction of Figures 1 and 6 to meet margin requirements. Submitted herewith are corrected Figures 1 and 6. Approval is requested.

## **II. Claims Rejected Under 35 U.S.C. § 112, second paragraph**

Claims 1-53 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In regard to claims 1, 18, 35 and 42, the Examiner states that the phrase “such as” renders these claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. The Examiner cites MPEP § 2173.05(d) as a basis for this rejection. However, Applicant has reviewed these claims and believes that the phrase “such as” is not used in the claims. The phrase “such that” is used in the claims but it is not a phrase followed by an exemplary cause covered by MPEP § 2173.05(d). The phrase “such that” is an adjectival phrase denoting a degree or quality specified by the ‘that’ clause. See WordNet 1.6, 1997, Princeton University. Thus, the language following the phrase “such that” is not exemplary but rather descriptive of the clause preceding the phrase. Therefore, the language of claims 1, 18, 35 and 42 appropriately points out and distinctly claims the subject which the Applicant regards as the invention. Accordingly, reconsideration and withdrawal of the indefiniteness rejection of claims 1, 18, 35 and 42 and their dependent claims are requested.

Claims 4-8, 20-25, 37, 38, 44 and 45 stand rejected under 35 U.S.C. § 112, second paragraph, for omitting process claim language. Applicant has amended these claims in a manner suggested by the Examiner. These amendments are not believed to be narrowing. Accordingly, reconsideration and withdrawal of the indefiniteness rejection of claims 4-8, 20-25, 37, 38, 44 and 45 are requested.

## **III. Claims Rejected Under 35 U.S.C. § 101**

Claims 1-53 stand rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. Applicant respectfully disagrees.

The elements of claims 1-53 include concrete actions including obtaining price data, receiving orders and processing monetary transactions, and thus are not merely abstract ideas. Further, in regard to independent claim 42 and the claims dependent from claim 42, these claims

clearly relate to the manipulation of data by a processor. Therefore, claims 1, 18, 35 and 42 meet the requirements of 35 U.S.C. § 101 by defining a new and useful “process” as defined by 35 U.S.C. § 100(b). Accordingly, reconsideration and withdrawal of the nonstatutory subject matter rejection are requested.

#### **IV. Claims Rejected Under 35 U.S.C. § 102**

Claims 1, 2, 8, 9, 11-13, 16-18, 25, 26, 28-30, 33, 35, 39-42, 46, 47, 49, 51 and 52 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,263,317 issued to Sharp, et al. (hereinafter “Sharp”).

Submitted herewith is a Declaration by Applicant pursuant to 37 C.F.R. § 1.131 stating that the invention of the present application was conceived prior to the filing of Sharp and that Applicant made a diligent effort to reduce the invention to practice from the time of its conception until its constructive reduction to practice by the filing of the present application. Therefore, Sharp cannot be cited as prior art under 35 U.S.C. § 102(e) against the present application. Accordingly, reconsideration and withdrawal of the anticipation rejection of claims 1, 2, 8, 9, 11-13, 16-18, 25, 26, 28-30, 33-35, 39-42, 46, 47, 49, 51 and 52 are requested.

#### **V. Claims Rejected Under 35 U.S.C. § 103**

Claims 3-7, 10, 14, 15, 19-24, 27, 31, 32, 36-38, 43-45, 48-50 and 53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharp in view of U.S. Patent No. 6,058,373 issued Blinn, et al., hereinafter (“Blinn”), U.S. Patent No. 5, 991,740 issued to Messer (hereinafter “Messer”), Official Notice, that which is old and well known and Applicant Admission.

The Examiner’s obviousness rejections of these claims rely on Sharp as the primary reference in combination with Blinn, Messer, Official Notice and Applicant’s Admission. In light of Applicant’s Declaration, as discussed in regard to the Anticipation rejection above, Sharp cannot be cited against the present application. Therefore, Applicant respectfully requests reconsideration and withdrawal of the obviousness rejections of these claims that are primarily based on Sharp.

Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-53 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 1/29, 2003

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### CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to: ~~Box~~ Non-Fee, Assistant Commissioner for Patents, Washington, D.C. 20231, on January 29, 2003.

Lillian E. Rodriguez  
Lillian E. Rodriguez

1-29-03  
January 29, 2003

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**  
**IN THE CLAIMS**

Please amend the claims as follows:

1           4.       The method of Claim 3 [wherein]further comprising:  
2           establishing the retailer profit data [is]as either a percentage above the manufacturer cost,  
3   or a specified sum.

1           5.       The method of Claim 3 [wherein]further comprising:  
2           varying the retailer profit data [varies] among the goods sold by the retailer.

1           6.       The method of Claim 3 [wherein]further comprising:  
2           establishing the retailer profit data [is]as the same for each of the goods sold by the  
3   retailer.

1           7.       The method of Claim 3 [wherein]further comprising:  
2           determining a retail price of the plurality of goods [is determined] by using the  
3   manufacturer cost and the retailer profit data for the good.

1           8.       The method of Claim 1 [wherein]further comprising:  
2           receiving the order [is received] from either a consumer or one of the plurality of retailers.

1           20.      The method of Claim 19 [wherein]further comprising:  
2           establishing distributor profit data [is] as either a percentage above the manufacturer cost  
3   or a specified sum; and  
4           establishing [wherein] retailer profit data [is]as either a percentage above the sum of the  
5   manufacturer cost and the distributor profit data, or a specified sum.

1           21.     The method of Claim 20 [wherein]further comprising:  
2           varying distributor profit data [varies] among the goods distributed by the distributor; and  
3           [wherein] varying retailer profit data [varies] among the goods sold by the retailer.

1           22.     The method of Claim 20 [wherein]further comprising:  
2           establishing distributor profit data [is]as the same for each of the goods distributed by the  
3 distributor; and  
4           [wherein]establishing retailer profit data [is]as the same for each of the goods sold by the  
5 retailer.

1           23.     The method of Claim 20 [wherein]further comprising:  
2           determining a retail price of the plurality of goods [is determined]using by the  
3 manufacturer cost, the distributor profit data, and the retailer profit data for the good.

1           24.     The method of Claim 20 further comprising:  
2           [wherein]providing the goods using two or more levels of distributors [participate in  
3 providing the goods] but only the selected distributor fills the order;  
4           [wherein] determining a retail price of the plurality of goods [is determined] by using the  
5 manufacturer cost, the distributor profit data for each of the participating distributors, and the  
6 retailer profit data for the good; and  
7           wherein processing a monetary transaction further comprises:  
8                   crediting all distributors who participated in providing the goods a sum  
9           representing their portion of the total value of the order.

1           25.     The method of Claim 18 [wherein] further comprising:

2           receiving the order [is received] from either a consumer or one of the plurality of retailers.

1           37.     The method of Claim 35 [wherein] further comprising:

2           establishing distributor profit data [is]as either a percentage above the manufacturer cost  
3     or a specified sum; and

4           [wherein]establishing retailer profit data [is]as either a percentage above the sum of the  
5     manufacturer cost and the distributor profit data, or a specified sum.

1           38.     The method of Claim 36 [wherein]determining a retail price of the plurality of  
2     goods [is determined] by using the manufacturer cost, the distributor profit data, and the retailer  
3     profit data for the good.

1           44.     The machine readable medium of Claim 42 [wherein]further comprising:  
2           establishing distributor profit data [is]as either a percentage above the manufacturer cost  
3     or a specified sum; and [wherein]

4           establishing retailer profit data [is]as either a percentage above the sum of the  
5     manufacturer cost and the distributor profit data, or a specified sum.

1           45.     The machine readable medium of Claim 43 [wherein] further comprising:  
2           determining a retail price of the plurality of goods [is determined] by using the  
3     manufacturer cost, the distributor profit data, and the retailer profit data for the good.